

**M. J. Metal Products, Inc. and Sheet Metal Workers  
International Association, Local Union #207.**  
Case 27-CA-16575

January 12, 2000

**DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND  
HURTGEN

Pursuant to a charge filed on October 5, 1999, the General Counsel of the National Labor Relations Board issued a complaint on October 26, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 27-RC-7813. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On December 2, 1999, the General Counsel filed a Motion for Summary Judgment. On December 3, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification. The Respondent challenges the unit determination<sup>1</sup> and the resolution of the determinative challenge ballot in the underlying representation case. The Respondent also requests that the instant proceeding be stayed pending resolution of its petition for review filed with the Court of Appeals for the Tenth Circuit in *M.J. Metal Products v. NLRB*.<sup>2</sup>

<sup>1</sup> 325 NLRB 240 (1997).

<sup>2</sup> The Board's decision in the underlying representation proceeding and consolidated unfair labor practice proceeding with respect to the challenged ballot is published at 328 NLRB 1184 (1999). The Board found that employee Shannon Leedall had been unlawfully discharged, and ordered that his challenged ballot be opened and counted. The Board also found that the Respondent had committed numerous unfair labor practices and concluded that a bargaining order as warranted pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). In its response to the Notice to Show Cause, the Respondent requests that the Board defer action on the General Counsel's Motion for Summary Judgment in the instant case until the U.S. Court of Appeals for the Tenth Circuit has ruled on the Respondent's pending petition to review the Board's finding in the prior unfair labor practice proceeding that the challenged voter (Leedall) had been unlawfully discharged in violation of Sec. 8(a)(3) of the Act. The Respondent's request is denied. See *Midland-Ross, Inc.*, 243 NLRB 1165, 1166 (1979), enfd. 653 F.2d 239 (6th Cir. 1981). In the prior case, Member Hurtgen declined to pass on the *Gissel* issue because there was at least a reasonable possibility that the Union would become the certified representative. That reasonable possibility has now become a reality. Thus, Member Hurtgen concurs

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore, find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all times material, the Respondent, a corporation with an office and place of business in Casper, Wyoming, has been engaged in the sheet metal business. The Respondent, in the course and conduct of its business operations, annually purchases and receives at its Wyoming facility goods, materials, and services valued in excess of \$50,000 directly from points and places outside the State of Wyoming.

We find that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held November 25, 1997, the Union was certified on August 30, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time production employees, engaged in the fabrication, assembly, shipping and receiving, and installation of products produced at the Employer's Casper, Wyoming facility; and excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

Since on or about August 26, 1999, continuing to date, the Union has requested the Respondent to recognize and

in the certification, the violation as of August 30, 1999, and the bargaining order. However, he concludes that a *Gissel* order is unwarranted. His view, as stated in *General Fabrications*, 328 NLRB 1114 (1999), is that, "The [Supreme] Court did not contemplate a *Gissel* order where the Union wins the election and is certified."

bargain collectively with it as the exclusive collective-bargaining representative of the employees in the unit with respect to their rates of pay, wages, hours of employment, and other terms and conditions of employment and, since August 30, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after August 30, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, M. J. Metal Products, Inc., Casper, Wyoming, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Sheet Metal Workers International Association, Local Union #207 as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and part-time production employees, engaged in the fabrication, assembly, shipping and receiving, and installation of products produced at the Employer's Casper, Wyoming facility; and excluding all

other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Casper, Wyoming, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 27 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 30, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Sheet Metal Workers International Association, Local Union #207 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All full-time and part-time production employees, engaged in the fabrication, assembly, shipping and receiving, and installation of products produced at our Casper, Wyoming facility; and excluding all other employ-

ees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

M. J. METAL PRODUCTS, INC.